



REPORT

from the Capital

Florida Supreme Court overturns statewide voucher program

The Florida Supreme Court overturned that state's school voucher program Jan. 5, saying it violates the Florida Constitution. But the court's decision did not address whether state money for parochial schools violates Florida's religious freedom laws.

Lower state courts had ruled against the Florida Opportunity Scholarship Program as well, quoting a provision of the Florida Constitution that says no state money "shall ever be taken from the public treasury directly or indirectly in aid ... of any sectarian institution."

But the high court's decision turned on a different provision of the state's charter that requires "a uniform, efficient, safe, secure and high-quality system of free public schools."

The voucher program violates that constitutional requirement, a 5-2 majority of the court said, because it "diverts public dollars into separate private systems parallel to and in competition with the free public schools that are the sole means set out in the Constitution for the state to provide for the education of Florida's children."

The decision in *Bush v. Holmes* was the culmination of a battle that began seven years ago, shortly after Gov. Jeb Bush came into office and promised to reform the state's education system. Legislators passed the voucher program as the centerpiece of Bush's education agenda.

In 2002, the federal Supreme Court ruled that voucher programs that include religious schools do not violate the First Amendment's ban on government support for religion as long as parents' decisions to spend their children's scholarship money at parochial schools are made through genuine private choice.

But in a subsequent decision, the Court made clear that states may place a higher restriction on government funding for religious institutions than the federal government does.

In 1999, longtime Pensacola teacher Ruth Holmes sued to have the program stopped, referencing both the uniformity and religious funding aspects of the Florida Constitution.

Several civil rights and religious freedom groups weighed in, advancing their competing views of government funding for religious schools.

The court, however, said they did not need to make a determination on the case's church-state merits because the uniformity objection to the program was sufficient to end the scholarships.

K. Hollyn Hollman, general counsel for the Baptist Joint Committee for Religious Liberty, said that "though the Florida Supreme Court's decision was not decided on the 'no aid' to religion provision ... , we welcome the court's decision. The decision strikes a voucher program that allows tax money to fund religious teaching."

—ABP and staff reports



The Florida Supreme Court ruled the Opportunity Scholarship Program was unconstitutional, citing uniformity requirements.

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Judge rules intelligent design unconstitutional

A federal judge dealt a setback to the teaching of intelligent design in public schools by ruling Dec. 20 that a Pennsylvania school district's policy promoted an unconstitutional variation of creationism, a religious theory.

U.S. Middle District Judge John E. Jones, who presided over a six-week trial in Harrisburg, Pa., ruled that intelligent design violates the First Amendment's Establishment Clause, which bars government from establishing a religion or favoring one religion over another.

Jones said it is "abundantly clear" the Dover Area School District's policy—which requires that ninth-grade students hear a statement on intelligent design prior to the start of a unit on evolution—"violates the Establishment Clause."

Jones added: "In making this determination, we have addressed the seminal issue of whether ID is science. We have concluded that it is not, and moreover that ID cannot uncouple itself from its creationist, and thus religious, antecedents."

The landmark case, which garnered international attention, pitted the American Civil Liberties Union, Americans United for the Separation of Church and State and 11 parents in the Dover district against the school board's policy.

Proponents of intelligent design say the universe and many living things are so complex that they must have been created by an intelligent, higher being. Critics say intelligent design is unscientific, rooted in creationism and a barely veiled attempt to advance religion into public schools.

Opponents to the Dover policy said the board was motivated by religious beliefs, specifically Christianity, when it approved a one-minute statement in which evolution is described as "not a fact" and intelligent design is mentioned as an alternative explanation of the origin of life.

"This is a tremendous victory for public schools and religious freedom," said the Rev. Barry W. Lynn, executive director of Americans United for the Separation of Church and State.

"It means that school board members have no right to impose their personal religious beliefs on students through the school curriculum."

The Rev. J. Brent Walker, executive director of the Washington-based Baptist Joint Committee for Religious Liberty, said: "Intelligent design is little more than creationism gussied up a bit. It may be taught in

social studies or comparative religion, not as science in biology class."

Advocates of intelligent design criticized Jones, a Republican appointee of President Bush, as an activist judge. They promised the decision will have limited effect because it applies only to the federal court district in which it was handed down.

"Anyone who thinks a court ruling is going to kill off interest in intelligent design is living in another world," said John West, associate director of the Center for Science and Culture at the Discovery Institute, a Seattle-based think tank researching intelligent design.

"Americans don't like to be told there is some idea that they aren't permitted to learn about. It used to be said that banning a book in Boston guaranteed it would be a best-seller. Banning intelligent design in Dover will likely only fan interest in the theory."

Casey Luskin, a Discovery Institute attorney, also downplayed the decision.

"In the larger debate over intelligent design, this decision will be of minor significance," said Luskin. She said the theory's "ultimate validity" will be determined "not by the courts but by the scientific evidence pointing to design."

During the trial, witnesses testified about intelligent design's religious roots and how the word "creationism" was systematically replaced with "intelligent design" in draft versions of the pro-intelligent design text "Of Pandas and People," recommended under the board policy.

Other witnesses testified that school board members spoke of the need for prayer in class and for creationism to be taught equally with evolution.

Eight board members who favored the policy were voted out of office Nov. 8. Since they were replaced by new board members opposing intelligent design, there is no reason to appeal the decision, said Luskin.

The York County school district, about 25 miles south of Harrisburg, was the first in the country to require the reading of a statement on intelligent design in science class. Experts on both sides of the issue had said that if the policy were allowed to stand in Dover, other public school districts around the country might be emboldened to add intelligent design to their science classes.

—RNS and staff reports



Judge John E. Jones ruled that intelligent design "violates the Establishment Clause ... [and] cannot uncouple itself from its creationist, and thus religious, antecedents."

REFLECTIONS

Foy Valentine told the truth with the bark on it

It was a high honor: Foy Valentine said “James Dunn tells the truth with the bark on it.” He said it at one of those dinners at which we all dressed up, ate well, and made nice. One sometimes suspects the sincerity of banquet talk. Yet, with all the hoo-hah, it was moving and marvelous to me because Foy said it.

Here’s why:

Foy knew what truth is. He comprehended. He was not only brilliant and well educated. His Ph.D. with T.B. Maston “took.” He was also well informed, a disciplined scholar of current events, the news, an avid reader. This human encyclopedia gleaned of gossip from his national network of cronies. He was my best source for “what’s going on.” He was a good steward and winnow of the truth.

Then, Foy Dan could say it so you knew what he meant. He communicated. Washington, the world of Christian ethicists, the realm of politics, the turf theological, and certainly the Baptist battleground: all are full of folks talking to themselves. There’s plenty of hand wringing, ain’t-it-awful talk, meaningless muttering, and sullen silence. It seems that an aspect of intellectual life in the United States (even in thoughtful circles) is timorous timidity and useless utterance, not Foy.

Dr. Valentine embodied ecumenism. He cooperated. His truth telling mattered, because, though he had a definite perspective and held Baptist beliefs bulldoggedly, he did not demur or hesitate to work with others. He was a founder of the Churches’ Center for Theology and Public Policy and The Interfaith Alliance, but made a great impact shaping Americans United for the Separation of Church and State. His hands-on participation significantly influenced the selection of the present leaders of both TIA and AU, Welton Gaddy and Barry Lynn. When he spoke, it counted.

This old Baptist bureaucrat believed deeply. He cussed. Now, quickly, in the 50 years that I knew him well I never once heard him take the Lord’s name in vain, nor be vulgar or crude or vicious. Not once! But he would say “Oh spit” with an infectious enthusiasm that would trump any ordinary expletive. He did not approach social justice passively. He brought his whole being to the task. A big part of that job was the defense of freedom of conscience. He said upon being honored in

2005, “Religious liberty’s corollary, the separation of church and state, is the most important contribution the United States has made to world civilization.” He went on, quoting Martin Marty, “There has never been an American doctrine of church-state separation, only a Baptist doctrine that has had great influence on America.” He staked his life on profound commitments. His being belonged to applied Christianity and from his innards, he told you so.

Foy was a genuinely compassionate churchman who took his opportunities of service seriously. He loved his fellow servants in the cause. He cared. I almost feel guilty being allowed to write these words about Foy. Others are entitled to be heard. His comprehensive and energetic understanding of what it means to be Baptist formed and informed the mindset of the Baptist Joint Committee for 25 years. I doubt that this agency, always small and underfunded, would have survived the massive assault of small-minded, propositional fundamentalism without his brand of toughmindedness. There was a tie that binds because he and we cared.

BJC board members participated with him in vivid and sometimes heated discussions. I think of the Rev. Betty Miller, Judge Charles Z. Smith, Gideon Zimmerman, John Binder, Grady Cothen, Lloyd Elder, Bob Campbell, Marvin Griffin, C.J. Malloy, Charles G. Adams, Earl Trent, Warren Magnuson and others. Please pardon my partial list. Then, a BJC staff smart enough to follow its board’s leadership also heard and respected Foy. For long periods of service John W. Baker, Rosemary Brevard, Stan Hastey, Larry Chesser, Victor Tupitza, Buzz Thomas and Brent Walker followed the marching orders somewhat shaped by the Foy Valentine mentality.

More and more Baptists understand religious liberty and church-state separation as the inevitable and necessary consequence of soul freedom. Even God will not deny one his/her free choice of loyalty, belief, allegiance. We come directly and personally to God, no filter, no formula, or we do not come at all.

Thanks Foy, for telling the truth with the bark on it.



James M. Dunn
President, BJC Endowment



Foy D. Valentine
(1923 - 2006)

IN RESPONSE TO FRANKLIN GRAHAM ON SEPARATION OF CHURCH AND STATE

BY BRUCE T. GOURLEY

In the late 18th and early 19th centuries, leading Baptist evangelist John Leland insisted that church and state should be kept completely separate. He denounced government aid to religion as nothing more than a “mischievous dagger” that polluted the gospel and sullied the church; he even denounced tax exemptions for ministers.

Some 200 years later, following the devastation wrought by Hurricane Katrina in the Gulf states, another leading Baptist evangelist tepidly declared, “I support, to a degree, the separation of church and state. ... But at times of disaster, at times of national tragedy, government must reach over the wall of separation While the vast majority of FEMA’s trailers sit unoccupied, faith-based relief organizations are struggling to acquire trailers for families ready to move in. The trailer situation is an example of a fundamental truth: Government is not the most efficient provider of compassion and care.” Franklin Graham went on to insist that the United States government should “entrust some of these billions of [relief] dollars into their [the churches] hands” (“One time to lower the wall,” *USA Today*, Nov. 27, 2005).

Certain clergy, Leland warned two centuries ago, were prone to try to persuade the government officials that religious favoritism could be “advantageous to the state.” Why did the clergy make this argument? “Chiefly covetousness, to get money,” Leland declared.

One of the most astounding betrayals in modern religious history is the legion of contemporary Baptists who not only have vigorously denounced and berated their own faith heritage of full religious liberty for all and complete separation of church and state, but have gone so far as to emulate the 17th and 18th century establishment clergy in colonial America whose persecution of Baptists birthed Baptists’ long and arduous journey to ensure religious liberty and separation of church and state in the federal constitution.

Leland’s prophetic words do not merely condemn Franklin Graham’s call to lower the wall of separation of church and state so that the government can more easily shovel taxpayers’ money to churches, they also sound a warning to all contemporary Baptists in America. Leland’s warnings against clergy accepting government tax exemptions are rarely heeded by Baptists of any theological persuasions. The only

instance I know of a local Baptist church today refusing tax-exempt status is First Baptist, Auburn, Ala., who several years ago began paying property tax to the government. And I have yet to personally hear a single Baptist minister denounce ministerial tax breaks.

Placed in this perspective, Franklin Graham’s call to lower the wall of separation of church and state under special circumstances is not overly surprising after all.

Baptist clergy of recent decades have become accustomed to being shown religious favoritism from the government. Why should some not now expect even greater deference from the government on religious grounds? Is Franklin Graham’s request for “some of these billions of dollars” not a reflection of the favoritism we are certain we deserve as ministers whose clerical role is “advantageous” to state and society?

John Leland understood that an attitude of expected favoritism from the state, in any form, trivializes the gospel and cheapens the church. Yet one could argue that virtually all contemporary Baptists (and most Christians) in America today expect some form of favoritism from the government by virtue of their faith, whether it be government enforcement of a particular brand of morality, the teaching of certain religious views in our nation’s schools, the public display of a portion of our faith’s sacred text or an exemption from taxes for clergy and church.

In the end, although Franklin Graham is to be admonished for his blatant demand of large-scale favoritism from the state, most all Christians today, John Leland would likely argue, are guilty of quietly violating the principle of separation, either for personal gain or the benefit of their local church.

Is it already too late to preserve the complete separation of church and state in America?

(This article first appeared in *The Baptist Studies Bulletin*, published by The Center for Baptist Studies, Mercer University.)



Bruce T. Gourley serves as associate director of The Center for Baptist Studies. A 1988 graduate of Mercer University, Gourley has an M.Div. degree from Southern Baptist Theological Seminary and is a History Ph.D. candidate at Auburn University.

Media Watch

'Gaining faith in federal money?'

The Virginian-Pilot (Hampton Roads, Va.)

January 16, 2006

The faith-based initiative has come under fire from a variety of critics, including some religious groups. One of them is the Baptist Joint Committee for Religious Liberty, a Washington-based lobbying group for 14 Baptist organizations.

Hollyn Hollman, the committee's general counsel, said the president's initiative threatens religious liberty by entangling government and religion in new ways.

Church-based groups—such as Lutheran Family Services and the Jewish Federation—have received government money for many decades, Hollman said, but they have done so under safeguards designed to make sure the money is used only for secular purposes.

For example, she said those groups typically set up separately incorporated entities to deliver the government-funded services.

"Now, they say you don't have to have a separate organization," she said. "In fact, money could go directly to a house of worship. That is a drastic change. ...

"Whenever the government funds a religious entity like a house of worship, it's going to end up controlling it. With government funding comes government strings."

'Perspective: Court ruling widely seen as setback to intelligent design'

The Associated Press

December 25, 2005

Yet opponents contend intelligent design advocates have emerged from the case substantially weakened. The ruling will likely influence judges in other districts and discourage other school officials from pursuing similar policies, said **K. Hollyn Hollman**, general counsel for the Baptist Joint Committee, a Washington group that promotes separation of church and state.

Battles over evolution are already being waged in Georgia and Kansas.

"Because it was a six-week trial, with a lot of testimony from proponents of intelligent design as well as critics from the scientific community, it's going to have a big impact," Hollman said. "It had a pretty full hearing."

'Intelligent Ruling'

Detroit Free Press staff editorial

December 21, 2005

In an essay Tuesday, **J. Brent Walker**, an attorney and minister who directs the Baptist Joint Committee

for Religious Liberty, described intelligent design as "no more than creationism with a little lipstick." Yet the Dover policy required students to hear a statement about it before ninth-grade biology lessons on evolution.

'Have a merry whatever'

Ventura County Star (Calif.)

December 13, 2005

J. Brent Walker, executive director of the Baptist Joint Committee for Religious Liberty, wrote in an article, "Respecting religious diversity during the holiday season," posted on the committee's Web site (<http://www.bjconline.org/>):

"What irony and how sad—to be picking a fight over what to call a season that for many celebrates the coming of the Prince of Peace. We would all do well to take a deep breath and exercise some common sense as we think and talk about this season."

Concluding his article, he wrote: "No, we do not need government promoting our religious holidays to the exclusion of others. Nor do we need a corps of purity police trying to dissuade our efforts to respect the religious diversity that is the hallmark of this country."

'It's beginning to look a lot like Christmas ... or else!'

Chicago Tribune

November 29, 2005

"I think it's disingenuous to say that Christmas is threatened just because government is not promoting your view or your favorite way of promoting the holiday," said **K. Hollyn Hollman**, general counsel of the Baptist Joint Committee for Religious Liberty, which stresses church-state separation.

'Parochial Schools to Get U.S. Funds for Rebuilding'

The Washington Post

October 19, 2005

But the **Rev. J. Brent Walker**, executive director of the Washington-based Baptist Joint Committee for Religious Liberty, said he did not understand the administration's logic [in not giving money to churches but giving money to parochial schools].

"Religious schools at the K through 12 level are almost always pervasively religious in the same way that houses of worship are, and I think for purposes of government funding should be treated the same," he said. "The government cannot pay to build them, and it should not pay to rebuild them."



K. Hollyn Hollman
General Counsel

Hearings demonstrate common church-state dynamic

No one expected the Senate hearings to unearth hidden truths about Judge Samuel Alito. Most expected he would demonstrate a broad understanding of the law, revealing little about how he would rule in tough cases. Still, I watched and listened carefully, aware that as with any lifetime appointment to the Supreme Court, the stakes are high.

Before the hearing, we evaluated Alito and

found his church-state record mixed. Some of his free exercise opinions suggest a strong commitment to protecting religious rights. For example, he has held laws unconstitutional that burden religious practice and allow secular exceptions without allowing religious exceptions. The cases are especially important because of the Supreme Court's 1990 decision that held the Free Exercise Clause does not require exemptions to laws of general applicability.

The nominee's Establishment Clause record, however, caused concern. He dissented from a decision

that struck a public school board policy that allowed high school students to vote whether to pray at graduation. Also worrisome were media reports that he was sympathetic toward state-sponsored prayer in public schools and critical of foundational Supreme Court decisions. In light of these red flags, we urged senators to ask searching questions. It was important to try to solicit some recognition of the positive role of the Establishment Clause—how it protects religious liberty, promotes the voluntary nature of religion, prevents governmental interference in religion and reduces conflict among religions.

Alito's testimony added only a little. He demonstrated a familiarity with and interest in church-state law, citing the various tests and recalling the facts of several cases.

While the nominee's comments were few, the hearings reminded us of an unfortunate dynamic: the tendency of some to distort the Court's church-state rulings for political purposes. Most notable was the opening speech of

Sen. John Cornyn, R-Texas, which included a stinging criticism of the Court. On matters of faith in the public square, Cornyn said he believed "our Supreme Court has been rewriting the law for a long time." Claiming that the issue was "near and dear" to him, he repeatedly said the Court had restricted the right of private citizens "to freely express their views in public."

Similarly misleading, Sen. Sam Brownback, R-Kan., commented on Alito's opinions concerning religious holiday displays on government property. Brownback characterized Alito's views as follows: "You would rather have a robust public square than a naked public square; ... you think there is room for these sorts of displays in the public square."

Fortunately, Alito made no sweeping claims about the validity of government-sponsored religious displays. Instead, he recalled the facts of the Jersey City case he had heard, particularly that community's religious diversity and practices. He noted that in this area the Supreme Court "has drawn some fairly fine lines," and said that he had applied the Jersey City facts to the Court's precedents.

The most extensive, and in BJC's view most important, discussion came during questions from Sen. Richard Durbin, D-Ill. Alito stated that he had no grand, unified theory of the Establishment Clause but that it "embodies a very important principle and one that has been instrumental in allowing us to live together successfully as probably the most religiously diverse country in the world and maybe in the history of the world." Further, Alito agreed that the Religion Clauses protect "the freedom to worship or not worship as you choose. And compelling somebody to worship would be a clear violation."

While Alito's testimony guarantees nothing, he affirmed some of the foundational Establishment Clause values that the BJC works to protect every day. With those values so often distorted or dismissed, even by members of the Senate Judiciary Committee, the need for careful judgment is critical.

Alito's testimony added only a little [to his Establishment Clause record]. He demonstrated a familiarity with and interest in church-state law, citing the various tests and recalling the facts of several cases.

New interns arrive for spring semester

Kimberly Palmer of Lanett, Ala., and Andrea Reyes of Dallas, Texas, are serving spring internships at the Baptist Joint Committee.



Andrea Reyes and Kimberly Palmer

Palmer graduated in May from Vanderbilt Divinity School with a master's in theological studies. She previously earned a bachelor's degree in communication studies from Vanderbilt University in 2002. She is the daughter of Ralph and Mary Palmer of Lanett, Ala. The Palmers are members of St. John

Community Baptist Church.

Reyes is a 2004 graduate of Dallas Baptist University, earning a bachelor's of business administration in management. She is anticipating graduation with a master's in business administration with a concentration in conflict resolution from Dallas Baptist University in May. She is the daughter of Dr. Gus and Mrs. Leticia Reyes. Dr. Reyes serves as the director of the call center at the Baptist General Convention of Texas and is on the pastoral team at Cockrell Hill Baptist Church in Oak Cliffe, Texas.

BJC General Counsel to speak at National Mainstream Conference

BJC General Counsel K. Hollyn Hollman will lead a plenary session at the National Mainstream Conference in Richmond, Va. The theme of this year's meeting, scheduled for Feb. 24-25, is "Celebrating Freedom: Another Look at Religion in America."

Inaugural BJC Shurden Lecture Series planned for April

Rabbi David Saperstein, director of the Religious Action Center of Reform Judaism, will be the featured speaker at the inaugural BJC Shurden Lecture Series. Rabbi Saperstein will speak at Mercer University in Macon, Ga., on April 4-5.

BJC to host Baptist History & Heritage Society annual meeting in Washington

The Baptist History & Heritage Society Annual Meeting, hosted by the BJC, will be in Washington, D.C., June 1-3. BJC Executive Director J. Brent Walker will deliver the keynote address, "BJC=JMD²: The Contributions of Joseph M. Dawson and James M. Dunn on the Baptist Joint Committee."

BJC launches continually updated Web log

Have you been looking for one place to go on the Internet for up-to-date news and commentary at the intersection of church and state? Bookmark the new BJC web log called "Blog from the Capital." A complementary offering to the BJC Web site and this publication, the web log includes links to compelling articles from sources not found on the www.BJConline.org Web site and features commentary from the primary blog contributor, Don Byrd.

Visit the blog online at www.BJConline.org/blog.

Supporters honor, memorialize others with donations to BJC

The BJC recently received the following donations.

In memory of Richard Waddington
Lois Waddington

In honor of Lockwood and Ruby Masters
Dr. and Mrs. David Lockard

In memory of Sara Rutherford
J.T. and Ann Rutherford
Charlotte Beltz

In memory of Lewis and Frances McKinney
Margie and Carroll Wheedleton

In honor of John and Rosemary Brevard
Robert and Parma Holt

In memory of Foy Valentine
James and Marilyn Dunn
Brent and Nancy Walker

In memory of Sid Reber
Brent and Nancy Walker
Jay Smith and Holly Hollman

In memory of Roy Lee Honeycutt
In honor of Wayne and Debby Griffin
In honor of Frank and Heidi Hilliard
In honor of Paul and Alice Herrington
In honor of Bob and Becky Irvine
In honor of Kendrick and Claudia Wells
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In honor of David and Anne McCoy
In honor of David and Pat Nightingale
In honor of Margaret and Barry Barlow
In honor of Mr. and Mrs. Clyde Ensor
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REPORT from the Capital

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♦ Capital Campaign Update ♦

A matter of potential

Speaking recently about the campaign to establish a Center for Religious Liberty on Capitol Hill, Baptist Joint Committee Executive Director J. Brent Walker said the agency needed a facility “worthy of our potential to make a difference in the fight for religious liberty.”

Since 1936, the Baptist Joint Committee for Religious Liberty has waged its fight in the nation’s capital. In that time, it has built a solid reputation as a bridgebuilder, bringing together strong coalitions of diverse groups for a common cause. Yet, it provides a unique voice as the only religious group devoted solely to religious liberty and church-state separation.

Gazing back through 70 years of history is a time-worthy exercise only in its ability to build excitement about the future—to shed light on the BJC’s potential. Making headway in the struggle for religious liberty for all requires technology, partnerships, expertise and an emphasis on education. The Center for Religious Liberty on Capitol

Hill will expand the BJC’s capacity in all of these areas by providing a state-of-the-art training center where it will lead, listen and learn, engaging in dialogue with pastors and lay people, coalition partners and legislators. These activities are not an end in themselves, however; they are an expression of our ministry. The Baptist Joint Committee’s mission is to defend and extend God-given religious liberty for all.

It’s a matter of looking forward and celebrating our history, while paving the way for another 70 years of leadership in the nation’s capital.



The Baptist Joint

Committee’s campaign to raise \$5 million was bolstered recently with an anonymous **\$100,000** gift. For more information on the Campaign or the Center for Religious Liberty, or if you would like to make a gift, please contact the BJC at 202-544-4226 or by e-mail at bjc@BJCOnline.org.

Our Challenge—Their Future

Securing religious liberty for our children and grandchildren



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